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AMENDED IN ASSEMBLY MAY 9, 2013

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1255

**Introduced by Assembly Member Pan
(Coauthors: Assembly Members Bloom and Chesbro)**

February 22, 2013

An act to amend ~~Section~~ *Sections* 12313, 12330, 12331, 12420, 12422, 12446, 12502, and 12503 of, and to add Sections 12245.2 and 12246.2 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1255, as amended, Pan. Corporations: consumer cooperatives.

Existing law, the Consumer Cooperative Corporation Law, governs the organization and operation of consumer cooperative corporations. The law specifies the provisions that may be set forth in the articles of incorporation of a consumer cooperative.

This bill would include among these provisions ~~the classes of preferred, nonvoting shares, if any, and whether the directors of the consumer cooperative corporation may set the number, series, and rights, preferences, privileges, restrictions, and conditions attaching to each class.~~ *authorization for the board of directors to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class of memberships authorized in the bylaws or articles and, if the bylaws or articles authorize a class of memberships to be divisible into a series, to any wholly unissued series of a membership class authorized to be divisible into a series, and to fix the*

number of memberships in the series and the designation of the series, as specified. The bill would require any amendment to the bylaws or articles of a consumer cooperative to be approved by the members of a series if the series would be adversely affected by the action, as specified. The bill would also make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12245.2 is added to the Corporations
2 Code, to read:

3 12245.2. “Preferred memberships” means memberships that
4 have a preference over any other memberships with respect to
5 distribution of assets on liquidation or with respect to payment of
6 distributions.

7 SEC. 2. Section 12246.2 is added to the Corporations Code,
8 to read:

9 12246.2. “Series” of memberships means memberships within
10 a class of memberships that have the same rights, privileges,
11 preferences, restrictions, and conditions, but that differ in one or
12 more rights, privileges, preferences, restrictions, or conditions
13 from other memberships within the class. Certificated securities
14 and uncertificated securities do not constitute a different series if
15 the only difference is certificated and uncertificated status.

16 ~~SECTION 1.~~

17 SEC. 3. Section 12313 of the Corporations Code is amended
18 to read:

19 12313. (a) The articles of incorporation may set forth any or
20 all of the following provisions, which shall not be effective unless
21 expressly provided in the articles:

22 (1) A provision limiting the duration of the corporation’s
23 existence to a specified date.

24 (2) A provision providing for the distribution of the remaining
25 assets of the corporation, after payment or adequate provision for
26 all of its debts and liabilities, to a charitable trust.

27 (b) Nothing contained in subdivision (a) shall affect the
28 enforceability, as between the parties thereto, of any lawful
29 agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) Provisions concerning the transfer of memberships, in accordance with Section 12410.

(3) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions, and conditions attaching to each class.

(4) Any other provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

(5) A provision conferring upon members the right to determine the consideration for which memberships shall be issued.

~~(6) The classes of preferred, nonvoting shares, if any, and whether the directors may set the number, the series, and the rights, preferences, privileges, restrictions, and conditions attaching to each class.~~

(6) A provision authorizing the board of directors, within any limits or restrictions stated, to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class of memberships authorized in the bylaws or the articles.

(7) If the bylaws or articles authorize a class of memberships to be divisible into a series, a provision authorizing the board of directors, within any limits or restrictions stated, to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued series of a membership class authorized to be divisible into a series, and to fix the number of memberships in the series and the designation of the series. As to any series, the number of which is authorized to be fixed by the board, the articles may also authorize the board to increase or decrease the number of memberships of any series of this type subsequent to the issuance of that series, but not below the number of memberships then outstanding. Unless the articles or bylaws provide otherwise, in case the number of memberships of any series is decreased, the memberships constituting this decrease shall resume the status which they had prior to the adoption of the board resolution originally fixing the number of memberships of this series.

1 SEC. 4. Section 12330 of the Corporations Code is amended
2 to read:

3 12330. (a) Except as provided in subdivision (c) and Sections
4 12331, 12360, 12364, 12462, and 12484, bylaws may be adopted,
5 amended, or repealed by the board unless the action would *do any*
6 *of the following*:

7 (1) Materially and adversely affect the rights or obligations of
8 members as to voting, dissolution, redemption, transfer,
9 distributions, patronage distributions, patronage, property rights,
10 or rights to repayment of contributed ~~capital~~; *capital*.

11 (2) Increase or decrease the number of members authorized in
12 total or for any ~~class~~; *class*.

13 (3) Effect an exchange, reclassification or cancellation of all or
14 part of the ~~memberships~~; *or memberships*.

15 (4) Authorize a new class of membership.

16 (b) Bylaws may be adopted, amended or repealed by approval
17 of the members (Section 12224); provided, however, that adoption,
18 amendment, or repeal also requires approval by the members of a
19 class *or series* if that action would *do any of the following*:

20 (1) Materially and adversely affect the rights or obligations of
21 that class *or series* as to voting, dissolution, redemption, transfer,
22 distributions, patronage distributions, patronage, property rights,
23 or rights to repayment of contributed capital, in a manner different
24 than such action affects another ~~class~~; *class or another series within*
25 *the same class*.

26 (2) Materially and adversely affect such class *or series* as to
27 voting, dissolution, redemption, transfer, distributions, patronage
28 distributions, patronage, property rights, or rights to repayment of
29 contributed capital, by changing the rights, privileges, preferences,
30 restrictions or conditions of another ~~class~~; *class or another series*
31 *within the same class*.

32 (3) Increase or decrease the number of memberships authorized
33 for ~~such class~~; *the class*.

34 (4) Increase the number of memberships authorized for another
35 ~~class~~; *class*.

36 (5) Effect an exchange, reclassification or cancellation of all or
37 part of the memberships of ~~such class~~; *or the class or series*.

38 (6) Authorize a new class of memberships.

1 (c) The articles or bylaws may restrict or eliminate the power
2 of the board to adopt, amend or repeal any or all bylaws, subject
3 to subdivision (e) of Section 12331.

4 (d) Bylaws may also provide that repeal or amendment of those
5 bylaws, or the repeal or amendment of specified portions of those
6 bylaws, may occur only with the approval in writing of a specified
7 person or persons other than the board or members. However, this
8 approval requirement, unless the articles or the bylaws specify
9 otherwise, shall not apply if any of the following circumstances
10 exist:

11 (1) The specified person or persons have died or ceased to exist.

12 (2) If the right of the specified person or persons to approve is
13 in the capacity of an officer, trustee, or other status and the office,
14 trust, or status has ceased to exist.

15 (3) If the corporation has a specific proposal for amendment or
16 repeal, and the corporation has provided written notice of that
17 proposal, including a copy of the proposal, to the specified person
18 or persons at the most recent address for each of them, based on
19 the corporation's records, and the corporation has not received
20 written approval or nonapproval within the period specified in the
21 notice, which shall not be less than 10 nor more than 30 days
22 commencing at least 20 days after the notice has been provided.

23 *SEC. 5. Section 12331 of the Corporations Code is amended*
24 *to read:*

25 12331. (a) The bylaws shall set forth (unless such provision
26 is contained in the articles, in which case it may only be changed
27 by an amendment of the articles) the number of directors of the
28 corporation, or the method of determining the number of directors
29 of the corporation, or that the number of directors shall be not less
30 than a stated minimum or more than a stated maximum with the
31 exact number of directors to be fixed, within the limits specified,
32 by approval of the board or the members (Sections 12222 and
33 12224), in the manner provided in the bylaws, subject to
34 subdivision (e). The number or minimum number of directors shall
35 not be less than three. Alternate directors may be permitted, in
36 which event, the bylaws shall specify the manner and times of
37 their election and the conditions to their service in place of a
38 director.

39 (b) Once members have been admitted, a bylaw specifying or
40 changing a fixed number of directors or the maximum or minimum

1 number or changing from a fixed to a variable board or vice versa
2 may only be adopted by approval of the members.

3 (c) The bylaws may contain any provision, not in conflict with
4 law or the articles, for the management of the activities and for
5 the conduct of the affairs of the corporation, including but not
6 limited to:

7 (1) Any provision referred to in subdivision (c) of Section
8 12313.

9 (2) The time, place and manner of calling, conducting and giving
10 notice of members', directors', and committee meetings, or of
11 conducting mail ballots.

12 (3) The qualifications, duties and compensation of directors;
13 the time of their election; and the requirements of a quorum for
14 directors' and committee meetings.

15 (4) The appointment of committees, composed of directors or
16 nondirectors or both, by the board or any officer and the authority
17 of ~~any such~~ these committees.

18 (5) The appointment, duties, compensation and tenure of
19 officers.

20 (6) The mode of determination of members of record.

21 (7) The making of reports and financial statements to members.

22 (8) Setting, imposing and collecting dues, assessments, and
23 membership and transfer fees.

24 (9) The time and manner of patronage distributions consistent
25 with this part.

26 (d) The bylaws may provide for eligibility, the manner of
27 admission, withdrawal, suspension, and expulsion of members,
28 and the suspension or termination of memberships consistent with
29 the requirements of Section 12431.

30 (e) The bylaws may require, for any or all corporate actions,
31 the vote of a larger proportion of, or all of, the members or the
32 members of any class, unit, or grouping of members or the vote
33 of a larger proportion of, or all of, the directors, than is otherwise
34 required by this part. ~~Such a~~ A provision in the bylaws requiring
35 ~~such a~~ greater vote shall not be altered, amended or repealed except
36 by ~~such the~~ greater vote, unless otherwise provided in the bylaws.

37 (f) The bylaws may contain a provision limiting the number of
38 members, in total or of any class *or series*, which the corporation
39 is authorized to admit.

1 (g) The bylaws may provide for the establishment by the
2 corporation of a program for the education of its members, officers,
3 employees and the general public in the principles and techniques
4 of cooperation.

5 *SEC. 6. Section 12420 of the Corporations Code is amended*
6 *to read:*

7 12420. A corporation may issue memberships having different
8 rights, privileges, preferences, restrictions, or conditions, as
9 provided in its articles or bylaws. *If the articles or bylaws authorize*
10 *at least one class of voting memberships, a corporation may also*
11 *authorize and issue additional classes of memberships, preferred*
12 *or otherwise, that are divisible into a series or are nonvoting or*
13 *both.*

14 *SEC. 7. Section 12422 of the Corporations Code is amended*
15 *to read:*

16 12422. (a) Unless the corporation's articles or bylaws so
17 provide, memberships are not redeemable. A corporation may
18 provide in its articles *or bylaws* for one or more classes *or series*
19 of memberships which are redeemable, in whole or in part, for
20 such consideration within such time or upon the happening of one
21 or more specified events and upon ~~such~~ *the* terms and conditions
22 ~~as are~~ stated in the articles *or bylaws*. However, no membership
23 shall actually be redeemed if prohibited by Chapter 4 (commencing
24 with Section 12450).

25 (b) Nothing in this section shall prevent a corporation from
26 creating a sinking fund or similar provision for, or entering into
27 an agreement for, the redemption or purchase of its memberships
28 to the extent permitted by Chapter 4 (commencing with Section
29 12450).

30 *SEC. 8. Section 12446 of the Corporations Code is amended*
31 *to read:*

32 12446. (a) ~~Subject to the provisions of subdivision (b), the~~
33 ~~provisions of Chapter 7 (commencing with Section 1500) of Title~~
34 10 of Part 3 of the Code of Civil Procedure shall not apply to any
35 proprietary interest in a consumer cooperative corporation. Any
36 proprietary interest that would otherwise escheat to the state
37 pursuant to Chapter 7 (commencing with Section 1500) of Title
38 10 of Part 3 of the Code of Civil Procedure shall instead become
39 the property of the corporation.

(b) Notwithstanding ~~the provisions of~~ subdivision (a), no proprietary interest shall become the property of the corporation under this section unless the following requirements are satisfied:

(1) The articles or bylaws shall specifically provide for the transfer of ownership of the otherwise escheated proprietary interests to the corporation.

(2) At least 60 days prior notice of the proposed transfer of the proprietary interest to the corporation is given to the affected member by first-class or second-class mail to the last address of the member shown on the corporation's records, and by publication in a newspaper of general circulation in the county in which the corporation has its principal office. Notice given in the foregoing manner shall be deemed actual notice.

(3) No proprietary interest shall become the property of the corporation under this section if written notice objecting thereto is received by the corporation from the affected member prior to the date of the proposed transfer.

(c) For purposes of this section, a "proprietary interest" shall mean and include any membership, membership certificate, membership share, or share certificate of any class *or series* representing a proprietary interest in, and issued by, the corporation together with all accrued and unpaid dividends and patronage distributions relating thereto.

SEC. 9. Section 12502 of the Corporations Code is amended to read:

12502. (a) Except as provided in this section or Section 12503, amendments may be adopted if approved by the board and approved by the members before or after the approval by the board.

(b) Notwithstanding subdivision (a), the following amendments may be adopted by approval of the board alone:

(1) An amendment extending the corporate existence or making the corporate existence perpetual, if the corporation was organized prior to August 14, 1929.

(2) An amendment deleting the initial street address and initial mailing address of the corporation, the names and addresses of the first directors, or the name and address of the initial agent.

(3) Any amendment, at a time the corporation has no members.

(4) *Any amendment authorized in the articles pursuant to subdivision (c) of Section 12313 fixing the rights, privileges,*

1 *preferences, restrictions, and conditions attaching to any wholly*
2 *unissued class of memberships.*

3 *(5) Any amendment authorized in the articles pursuant to*
4 *subdivision (c) of Section 12313 fixing the designation, number of*
5 *memberships and the rights, privileges, preferences, restrictions,*
6 *and conditions attaching to any wholly unissued series of*
7 *memberships, or an increase or decrease in the number of*
8 *memberships of any series.*

9 (c) Whenever the articles require for corporate action the
10 approval of a particular class of members or of a larger proportion
11 of, or all of, the votes of any class, or of a larger proportion of, or
12 all of, the directors, than is otherwise required by this part, the
13 provision in the articles requiring ~~such~~ a greater vote shall not be
14 altered, amended or repealed except by ~~such~~ the class or ~~such~~ the
15 greater vote, unless otherwise provided in the articles.

16 *SEC. 10. Section 12503 of the Corporations Code is amended*
17 *to read:*

18 12503. (a) An amendment ~~must~~ *shall* also be approved by
19 the members (Section 12224) of a class, whether or not ~~such~~ the
20 class is entitled to vote thereon by the provisions of the articles, if
21 the amendment would *do any of the following:*

22 ~~(a)~~

23 (1) Materially and adversely affect the rights, privileges,
24 preferences, restrictions or conditions of that class as to voting,
25 dissolution, redemption or transfer, or the obligations of that class,
26 in a manner different than such action affects another ~~class;~~ *class.*

27 ~~(b)~~

28 (2) Materially and adversely affect such class as to voting,
29 dissolution, redemption or transfer by changing the rights,
30 privileges, preferences, restrictions or conditions of another ~~class;~~
31 *class.*

32 ~~(c)~~

33 (3) Increase the number of memberships authorized for ~~such~~
34 ~~class;~~ *the class.*

35 ~~(d)~~

36 (4) Increase the number of memberships authorized for another
37 ~~class;~~ *class.*

38 ~~(e)~~

39 (5) Effect an exchange, reclassification or cancellation of all or
40 part of the memberships of ~~such~~ ~~class;~~ *or the class.*

- 1 ~~(f)~~
2 (6) Authorize a new class of memberships.
3 (b) *An amendment shall also be approved by the members of a*
4 *series whether or not the series is entitled to vote thereon by the*
5 *articles or bylaws if the series is adversely affected by the*
6 *amendment in a different manner than other shares of the same*
7 *class.*

O